

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1402 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

KANUBHAI @ KANIYO @ KALIYO KESHAVBHAI RAVAT

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 02/05/2000

ORAL JUDGEMENT

#. The petitioner - Kanubhai @ Kaniyo @ Kaliyo Keshabhai Ravat, has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by Commissioner of Police, Ahmedabad City, Ahmedabad, in

exercise of powers under Section 3(1) of the PASA Act, dated January 8, 2000.

#. The grounds of detention indicate that the detaining authority took into consideration three offences registered against the petitioner. The detaining authority also took into consideration the statements of two anonymous witnesses and came to conclusion that the petitioner is a "dangerous person", that activities are detrimental to public order, that fear expressed by the witnesses qua the petitioner was genuine and therefore, powers under section 9(2) of the PASA Act were exercised by the detaining authority by not disclosing identity of these witnesses.

#. The petitioner has raised many contentions. However, Mr. Prajapati has restricted his argument to the fact that there is delay on the part of the detaining authority in forwarding the representation which has infringed the right of the detainee of making an effective representation. In support of his submission, he has placed on record, a communication received from the detaining authority dated March 9, 2000. He, therefore, urged that the petition may be allowed.

#. Mr. K.T. Dave, learned AGP has opposed this petition.

#. Having regard to rival side contentions, plain reading of the communication dated March 9, 2000, addressed to the detainee indicates that the representation made on behalf of the detainee was received on March 3, 2000 by the detaining authority. The same has been forwarded to the government on March 9, 2000 as the detaining authority had become functus officio. The order of detention having been approved by the government, the detaining authority had become functus officio and all that it was required to do was to forward the representation to the government expeditiously. The authority. The delay caused in forwarding the representation is not explained by the detaining authority either by filing an affidavit or otherwise. The result is that the delay in sending the representation has resulted into delay in considering the representation by the government which would infringe the right of the detainee of making an effective representation envisaged under Article 22(5) of the Constitution. The continued detention, therefore, would be rendered bad in law. The petition deserves to be allowed.

#. The petition is allowed. The order of detention dated January 8, 2000 is quashed and set aside. The detenue- Kanubhai @ Kaniyo @ Kaliyo Keshabhai Ravat, is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

pirzada/-